

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re J. Ezra Merkin and BDO Seidman Securities
Litigation

Case No. 08 Civ. 10922 (DAB)

**DECLARATION OF DEMET BASAR IN SUPPORT OF PLAINTIFFS' MOTION
PURSUANT TO RULE 59(e) TO ALTER OR AMEND THE JUDGMENT**

1. I am a member of the law firm Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein"), which represents co-lead Plaintiffs Jacob E. Finkelstein CM IRA Rollover Custodian ("Finkelstein") and Nephrology Associates, PC Pension Plan ("Nephrology Associates") in this action. Wolf Haldenstein was appointed co-lead counsel in this action, together with Abbey Spanier Rodd & Abrams LLP ("Abbey Spanier"), which represents co-lead Plaintiffs New York Law School ("NYLS") and Scott Berrie. I submit this Declaration in support of the Plaintiffs' Motion Pursuant to Rule 59(e) to Alter or Amend the Judgment.

2. This action began on December 16, 2008 with the filing of two class actions by NYLS and Berrie, respectively, alleging Section 10(b) and common law claims against Ascot Partners, L.P. ("Ascot"), Ezra Merkin ("Merkin"), and BDO Seidman, L.P. for losses suffered by investors in the Ascot Fund. On April 4, 2009, this Court consolidated the two actions, appointed NYLS and Berrie as co-lead plaintiffs, and their counsel, Abbey Spanier as lead counsel. Doc. No. 20. On April 27, 2009, co-lead plaintiffs filed a Consolidated Amended Class Action Complaint. Doc. No. 21.

3. On March 4, 2009, Nephrology Associates, an investor in the Ariel Fund, filed a class action complaint against the Ariel Fund, Gabriel Capital Corporation ("GCC"), Merkin, BDO Tortuga, BDO International, and others, alleging common law causes of action for losses suffered by investors in the Ariel Fund. On May 7, 2009, Finkelstein, another investor in the

Ariel Fund, filed a class action complaint alleging both federal securities fraud and common law claims against the defendants. On June 25, 2009, this Court consolidated the Nephrology Associates action and the Finkelstein action with the consolidated *In re J. Ezra Merkin and BDO Seidman Securities Litigation*. Doc. No. 23. Subsequently, on May 12, 2010, the Court issued an Order appointing: (i) NYLS and Berrie co-lead plaintiffs on behalf of Ascot and Gabriel Fund investors; (ii) Finkelstein lead plaintiff on behalf of Ariel Fund Investors; (iii) Abbey Spanier as co-lead counsel on behalf of co-lead plaintiffs NYLS and Berrie, and (iv) Wolf Haldenstein as co-lead counsel on behalf of co-lead plaintiff Finkelstein. Doc. No. 52.

4. On June 28, 2010, Plaintiffs filed the Third Amended Consolidated Class Action Complaint (“TAC”) alleging violations of Section 10(b) of the Exchange Act and common law claims against Merkin, GCC, BDO Seidman LLP, BDO Binder, and BDO Tortuga (collectively, the “Defendants”), and a Section 20(a) claim against Merkin and GCC. Doc. No. 59. On July 30, 2010, BDO Seidman LLP, BDO Binder, and BDO Tortuga (collectively, the “BDO Defendants”) filed a motion to dismiss the TAC, and on August 2, 2010, Merkin and GCC also moved to dismiss. The Court issued its Memorandum and Order granting Defendants’ motions to dismiss on September 23, 2011, and on September 27, 2011, the Judgment implementing the order was entered.

5. Annexed hereto as Exhibit A is the Plaintiffs’ [Proposed] Fifth Consolidated Amended Class Action Complaint (“FAC”).

6. Annexed hereto as Exhibit B is a “redline” version of the FAC, which shows the comparison between the FAC and the TAC.

7. Annexed hereto as Exhibit C is the Brief for the Attorney General of the State of New York as Amicus Curaie, *Barron v. Igolnikov*, 10-1387 cv (2d Cir.), which sets forth the

Attorney General's view that the Martin Act does not preempt independent and properly pled common law causes of action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of October, 2011, at New York, New York.

/s/ Demet Basar

DEMET BASAR